

1 bankruptcy with a different view of your  
2 characterization.

3 JUDGE SIPPEL: All right. Well,  
4 we can get into that. Maybe you have some  
5 very interesting views on this. But let me  
6 hear Mr. Keller --

7 MR. KELLER: That's just --

8 JUDGE SIPPEL: Go ahead.

9 MR. KELLER: That's just my  
10 representation to you generally of what the  
11 plan provides for.

12 The hearing has been set on this.  
13 I believe the hearing in bankruptcy court is  
14 scheduled for June the 13th of this year,  
15 right? Sometimes those change, but I believe  
16 that's the date set for the hearing.

17 When we had our last discussion of  
18 this in here, the thought was that the second  
19 Thursday proposal would be filed upon  
20 confirmation of the plan, which is a fancy  
21 word for approving the plan.

22 We certainly will not be filing

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1 any later than that, I mean, shortly after  
2 confirmation. But I have had discussions with  
3 FCC counsel for Choctaw. And there is some  
4 idea that we might file earlier than that.  
5 Basically what we would key it to is we are  
6 waiting to find out about any sort of what  
7 they call stalking horse bait in the  
8 bankruptcy court; whereas, is the court going  
9 to open this up to competing bids? And if so,  
10 is there going to be a deadline for such  
11 competing bids?

12 And at such time as we are  
13 satisfied that either there are not going to  
14 be competing bids or the deadline has passed  
15 and none of them filed; in other words, as  
16 long as we are reasonably sure that this is  
17 not merely a stalking horse but is the entity  
18 that is ultimately going to be approved by the  
19 bankruptcy court, we would probably want to  
20 proceed and go ahead and make the second  
21 Thursday filing at that time.

22 Obviously the Commission would not

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1 rule on it until the final bankruptcy court  
2 confirmation, but, nevertheless, we can get  
3 the paperwork in. So that is sort of the game  
4 plan at this point.

5 JUDGE SIPPEL: What kind of date?  
6 In broad estimates, what kind of dates?  
7 You've got June 13th for a hearing.

8 MR. KELLER: Honestly I don't know  
9 for sure. My guess is early -- if we wait  
10 until confirmation, we're probably talking  
11 about sometime in the -- maybe very late  
12 summer or very early on. Sometime in  
13 August-September possibly. I don't know.

14 But if the court on June 13th  
15 either does not open this up for bids or sets  
16 a deadline that's earlier than that, then we  
17 could possibly file the second Thursday plan  
18 earlier than that, you know.

19 But, nonetheless, the Commission  
20 is not going to act on the second Thursday  
21 plan until the confirmation anyway. And I  
22 suspect confirmation is going to come in

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1 August-September.

2 JUDGE SIPPEL: Well, you're right  
3 about the second point, but let's just take  
4 things at they are. Now, you said that there  
5 was a plan of reorganization filed on the 30th  
6 of April. Do the parties have a copy of that?  
7 The parties --

8 MR. KELLER: I believe so. I know  
9 this --

10 MS. KANE: We do, Your Honor. We  
11 have reviewed it. And we have serious  
12 concerns with it in terms of the impact it  
13 might have on a second Thursday filing.

14 As was explained by Mr. Keller,  
15 this plan contemplates assigning the entire  
16 portfolio of Maritime's licenses, which are  
17 still currently valued at \$42.2 million, to a  
18 group of secured creditors that are only owed  
19 \$17 million.

20 We have had this discussion  
21 numerous times in prehearing conferences  
22 before, but there is a concern that there is

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1 no precedent for applying second Thursday when  
2 you are assigning greater value to the  
3 creditors than what they are owed.

4 MR. HAVENS: The --

5 MS. KANE: I'm sorry. Excuse me,  
6 Mr. Havens.

7 JUDGE SIPPEL: Mr. Havens?

8 MR. HAVENS: Yes, sir.

9 JUDGE SIPPEL: I've got a button  
10 here. I can stop this right now, but I don't  
11 want to. Just hang on. Just hang on.

12 Go ahead. Finish, please.

13 MS. KANE: The Bureau is quite  
14 concerned that a second Thursday filing based  
15 on this plan would not be sufficient. And we  
16 have been holding up every other issue in this  
17 hearing based on the fact that second Thursday  
18 would resolve those issues. But with this  
19 kind of plan, we have serious concerns.

20 We know that at previous points,  
21 we have talked about a valuation process  
22 occurring in the bankruptcy court. We have

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1 heard nothing that there's been any additional  
2 valuation of these licenses. And, in fact, in  
3 their plan, Maritime has continued to stand by  
4 their \$42.2 million assessment that Mr. Keller  
5 has said is inaccurate.

6 So we're befuddled because we  
7 thought there was going to be a valuation  
8 processing occurring in the bankruptcy court  
9 or that a valuation process should occur in  
10 this arena in order to determine whether a  
11 second Thursday filing is even possible.

12 JUDGE SIPPEL: Well, let me ask  
13 Mr. Keller that question, then. What about  
14 valuation? Is the bankruptcy court involved  
15 in that?

16 MR. KELLER: Your Honor, I don't  
17 believe -- well, first of all, I take issue  
18 with the issues, as it were. The rubrics of  
19 second Thursday are that the alleged  
20 wrongdoers not benefit and that there is  
21 benefit to the innocent creditors.

22 Whether what the innocent

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1 creditors receive is a portion of what they  
2 have coming to them, all of what they have  
3 coming to them, or in this case possibly more  
4 than what they have coming to them under the  
5 plan does not negate second Thursday. The  
6 only issue for second Thursday where an  
7 overvalue, if you want to call it that, would  
8 be of concern would be to make sure that none  
9 of that overvalue gets back to the alleged  
10 wrongdoers.

11 In this particular case, I cannot  
12 speak to what the internal bankruptcy law  
13 reasons are. I can check with bankruptcy  
14 counsel and find out why this particular  
15 valuation was used. I suspect because it was  
16 the one that was already on file with the  
17 court.

18 But, be that as it may, what I can  
19 tell you is that the secured creditors who  
20 make up Choctaw are sort of taking a risk  
21 here. They're saying, "All right. We're  
22 going to forego our claims" of however many

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1 million dollars it is -- I don't know the  
2 exact number -- "in exchange for which we will  
3 take these assets."

4 They're also -- it's not just  
5 their claims. They're also making good on all  
6 of the other claims, all the administrative  
7 claims, all the other secured claims, all the  
8 unsecured claims. They're undertaking to pull  
9 that off.

10 They're gambling, if you want to  
11 call it that. But yes. They certainly do  
12 hope that the total value of the portfolio  
13 will be more than that, which is why they are  
14 willing to take that risk. They have no  
15 guarantee of that.

16 But for second Thursday purposes,  
17 it really is irrelevant. It is irrelevant  
18 whether the actual value turns out to be half  
19 of what the claims, equal to what the claims  
20 are, or twice what the claims are worth so  
21 long as the innocent creditors do not benefit;  
22 and, second, the alleged wrongdoers do not

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1 benefit.

2 And, furthermore, this is really  
3 an issue to be addressed in the context of the  
4 second Thursday proposal. Whether this is or  
5 is not proper for second Thursday, those are  
6 the merits of second Thursday itself.

7 MR. HAVENS: Can I address this  
8 appropriately, sir?

9 JUDGE SIPPEL: Well, I just want  
10 to just ask. Let me say my piece. And yes,  
11 you will.

12 It sounds to me like you're asking  
13 the Commission to be part of a kind of a  
14 gaming procedure here that Choctaw is going to  
15 roll the dice on this. If they come up high,  
16 that's great.

17 Now, I don't know what the bottom  
18 is. I don't know how they're securing their  
19 bottom on this. But it doesn't sound like  
20 it's -- to me it sounds like it's got elements  
21 of at least some things happening that I would  
22 like to know more about.

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1                   MR. KELLER: I'm aware of actually  
2 no precedent that says that second Thursday  
3 prohibits selling the assets for more than  
4 they are worth so long as the alleged  
5 wrongdoers are not --

6                   JUDGE SIPPEL: It's going to be a  
7 case of first impressions. How do they know  
8 that they are going to be able to get  
9 licenses, I mean, that the Commission is going  
10 to approve the licenses?

11                  MR. KELLER: Well, that's the  
12 whole point of the second Thursday proposal,  
13 is to --

14                  JUDGE SIPPEL: They don't  
15 automatically get them.

16                  MR. KELLER: I understand that.

17                  MR. HAVENS: Can I address this,  
18 sir?

19                  JUDGE SIPPEL: Yes, sir. Yes,  
20 sir, Mr. Havens. You have been very patient.

21                  MR. HAVENS: Thank you.

22                  Three things. A hearing was

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1 called on the specific matter that Maritime  
2 raised with regard to the issue G. Your Honor  
3 issued an order that the parties meet a  
4 concern, attempt to agree upon what would be  
5 the limitation of this for the hearing. That  
6 was agreed to. The agreement was it was issue  
7 G.

8 Mr. Keller is blindsiding my  
9 companies and myself by getting into other  
10 issues in this hearing, including a subsequent  
11 argument on second Thursday, when I didn't  
12 have any opportunity to prepare with counsel  
13 or invite our bankruptcy counsel to be a part  
14 of this debate.

15 So I object to Mr. Keller making  
16 an agreement under Your Honor's order on what  
17 the limitation would be in this hearing and  
18 then flagrantly getting into an argument from  
19 second Thursday and discussing the bankruptcy  
20 plan, which I believe is improperly  
21 characterized, including even what it is.

22 So I don't know how to -- I mean,

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1 I am being told I am the non-attorney, I am  
2 the party who can be out of order. I think  
3 Mr. Keller is out of order here. And it is  
4 inappropriate in any hearing to agree on one  
5 thing, to limitation, to call for a meeting  
6 with certain specific issues to be raised, and  
7 then to get into an entirely different matter.

8 I don't know how to participate  
9 with or without attorneys when the hearing is  
10 called for one thing and then a party is  
11 allowed to give substantive arguments.

12 And I respect Ms. Kane for her  
13 views on that. And I think I agree with what  
14 she expressed, but this was not a topic today.  
15 How could I prepare for it with counsel and  
16 bankruptcy counsel if it wasn't to be an issue  
17 today?

18 JUDGE SIPPEL: Well, I think if  
19 you had a lawyer here, you wouldn't have that  
20 problem. I mean, this is just a hearing  
21 conference. I mean, yes, I want to know what  
22 everybody is prepared to talk about, but I am

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1 not disappointed when somebody says -- you  
2 know, this bankruptcy issue has been hanging  
3 around for a long time. We're just simply  
4 getting a status report. Okay.

5 MR. HAVENS: If I --

6 JUDGE SIPPEL: Look, he can make  
7 all the arguments he wants. You can make all  
8 the arguments you want. You are just in a  
9 prehearing conference. There is nothing going  
10 to be resolved on arguments.

11 MR. HAVENS: I just get the --

12 JUDGE SIPPEL: There's no  
13 evidence.

14 MR. HAVENS: This wasn't an issue  
15 to be discussed today. And it's not just a  
16 status report that Mr. Keller is giving. He  
17 was making substantive arguments on how the  
18 plan he discussed, the chapter 11 plan, should  
19 meet the standard as he sees the standard  
20 being or the new precedent being for second  
21 Thursday.

22 So unless I knew that would be

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1 argued, how can I prepare for that?

2 JUDGE SIPPEL: Look, Mr. --

3 MS. KANE: Your Honor, maybe I can  
4 help.

5 JUDGE SIPPEL: Go ahead, Ms. Kane.  
6 Please help me.

7 MS. KANE: Let me try. Maritime  
8 filed a report regarding what would be sort of  
9 attempts to reach agreement on what would be  
10 covered in this prehearing conference in which  
11 the parties did agree that at least the issue  
12 of issue G and discovery related to issue G  
13 would be covered.

14 He did raise the fact in that  
15 pleading, which he served on Mr. Havens and I  
16 presume on Mr. Havens' other entities'  
17 counsel, that he would raise a bankruptcy  
18 status issue. So, at least from that  
19 perspective, I am actually defending Maritime  
20 in here that he has provided notice that this  
21 would be a topic for discussion today.

22 JUDGE SIPPEL: You don't have to

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1 use that terminology.

2 MR. HAVENS: I understand. I  
3 understand the --

4 JUDGE SIPPEL: No, no. Mr.  
5 Havens, you -- now, wait a minute. I  
6 interrupted. Ms. Kane is not finished. Just  
7 hold off.

8 MS. KANE: The other issue that we  
9 want to at least -- and we don't want to get  
10 into a substantive discussion today of second  
11 Thursday, but we are concerned that this HDO  
12 was released over a year ago. It covers  
13 issues that pertain to the qualifications of  
14 Maritime and whether it should be entitled to  
15 remain a licensee.

16 And the only basis on which those  
17 licenses could be transferred in the absence  
18 of an adjudication by Your Honor on those  
19 issues is an exception to that. And that is  
20 second Thursday. And so the large spectrum of  
21 such a second Thursday that Maritime is  
22 suggesting flies in the face of the fact that

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1 it is an exception to Jefferson Radio and  
2 should be narrowly construed.

3 And we have been holding up all of  
4 these other issues on the qualifications of  
5 Maritime to hold these licenses and to  
6 transfer the licenses in the hopes that second  
7 Thursday would resolve those issues.

8 Our concern is that this plan is  
9 not going to be certainly the way it is  
10 phrased immediately granted and that we will  
11 continue to hold those issues in abeyance ad  
12 infinitum until Maritime can provide a plan  
13 that actually complies with the narrow  
14 construction of second Thursday as an  
15 exception to Jefferson Radio.

16 JUDGE SIPPEL: Well, you want to  
17 respond to that?

18 MR. KELLER: I only want to say a  
19 couple of things. One is, Ms. Kane, thank  
20 you. She already said the one thing I was  
21 going to say, that in our filing that we made  
22 on the report of our negotiations, paragraph

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1       6, we did specifically state that we would be  
2       providing a report on the status and  
3       developments in the bankruptcy.

4               The only reason I got into  
5       anything that might be characterized as  
6       substance or merits at all was because the  
7       Bureau raised the issue, saying they had  
8       problems with the plan and what they were.

9               JUDGE SIPPEL: All right. Now,  
10       are you satisfied with that, Mr. Havens? He  
11       did give notice.

12              MR. HAVENS: No, I'm not, because  
13       it was Maritime who called this prehearing  
14       because the Bureau has made many filings with  
15       regard to Maritime not complying with the  
16       obligations of discovery on issue G.

17              But, Your Honor, I would prefer  
18       this prehearing to get to issue G. I don't  
19       have anything further to say about that  
20       because I don't want to spend time on that  
21       issue right now.

22              JUDGE SIPPEL: Well, okay. Let's

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1 leave it, then. We're not going to hear about  
2 it again.

3 I'm sorry. I cut you off, Mr. --

4 MR. KELLER: No. That's really  
5 all I have to say. I mean, I figure, as with  
6 other things, I'm sure more will be said in  
7 writing about this in the near future.

8 JUDGE SIPPEL: There is no  
9 question about that. Now --

10 MS. KANE: Your Honor, if we may,  
11 where do we stand on whether there will be  
12 additional valuation of these licenses?

13 JUDGE SIPPEL: Right now? We're  
14 stuck. You know, if you have a theory on  
15 this, I don't know what the obligations are  
16 for anybody to make a valuation at this point,  
17 but I do have some serious questions as to  
18 whether the second Thursday can be used in the  
19 way that it is being used. I think there is  
20 a process problem here, issues of it anyway.

21 I mean, that's where my concern  
22 is. I'm trying to avoid getting down into the

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1 depths of what the bankruptcy court is  
2 supposed to be doing. And if they're not  
3 interested in valuation, I would like to know  
4 why. Nobody is raising it.

5 MR. KELLER: I'm not a bankruptcy  
6 lawyer, but I believe the bankruptcy court's  
7 concern about valuation would just be to make  
8 sure that once it's -- I think the bankruptcy  
9 court's concern diminishes greatly once  
10 they're satisfied that the creditors are  
11 satisfied. And this was a plan that was  
12 negotiated with all of the secured creditors  
13 and the unsecured creditors' committee.

14 And I will have to speak with  
15 bankruptcy counsel. I suspect -- I don't know  
16 what the reasons were for using this  
17 particular valuation plan. I think it was  
18 just to demonstrate that there is at least  
19 some reasonable basis for believing that the  
20 assets were not to cover the claims.

21 JUDGE SIPPEL: Well, I would  
22 think, though, that in a normal bankruptcy

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1 proceeding, about four years ago, I was in one  
2 to help a nurse who was bankrupt, but, you  
3 know, you list all the assets up. It gets a  
4 value. And that's what the bankruptcy -- you  
5 know, there wasn't even a hearing, but that is  
6 what is acted upon. And there is verification  
7 under oath or something that this is what the  
8 value is, estimated values or market value,  
9 whatever you want to call it.

10 There is speculative value. This  
11 thing might be worth \$50 million or it might  
12 be worth \$17 million and you're going to roll  
13 the dice. You know, you might be rich or you  
14 might not be rich. But I don't know what the  
15 hell is going on.

16 MR. KELLER: That's a bankruptcy  
17 law issue, Your Honor. And I think if the  
18 Bureau --

19 JUDGE SIPPEL: Right now I'm  
20 making it my issue until I get clarification.

21 MR. KELLER: Well, again, I'm  
22 saying that I dispute it. Maybe we're going

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1 to have to brief this issue, too, but I  
2 dispute that the valuation is really that much  
3 of an issue under second Thursday.

4 The issue under second Thursday is  
5 not how much the licenses are worth. The  
6 issue is whether or not --

7 MR. HAVENS: Well, here we go.  
8 We're back into the argument.

9 JUDGE SIPPEL: Now, wait a minute,  
10 Mr. Havens. We're not back into the argument.  
11 We're not in there. Forget about it.

12 MR. KELLER: We're just trying to  
13 find --

14 JUDGE SIPPEL: This is where you  
15 need a lawyer because you are concerned about  
16 things that really aren't concerns. This is  
17 a prehearing conference. It is not a hearing.  
18 There is no testimony being taken. We don't  
19 have an evidentiary record even yet, which is  
20 what we are trying to put together.

21 MR. HAVENS: All right.

22 JUDGE SIPPEL: Just hold your

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1 horses. Okay? I've got to get back to this  
2 point. Hold on just a second.

3 MR. HAVENS: I have that for you  
4 if you would like it.

5 JUDGE SIPPEL: No, not right now.

6 Look, Mr. Keller, I have been  
7 distracted in so many ways. Valuation -- I'm  
8 sorry. Yes. You said second Thursday only  
9 wants to know one or two things. I've been  
10 through second Thursday proceedings before.  
11 They have been successful. And they have  
12 always been a little bit problematical but not  
13 to these proportions.

14 Nobody really knows what the  
15 ultimate limits of second Thursday are. And  
16 every case is a new case. Every situation is  
17 a new situation.

18 I don't know if second Thursday is  
19 intended to do what you say you are planning  
20 to do. That valuation doesn't mean a hoot.  
21 I don't see how valuation doesn't mean a hoot.  
22 Just because the creditors are happy with it?

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1                   MR. KELLER: There is nothing in  
2 the rubrics of second Thursday and the  
3 precedents of second Thursday that says that  
4 it's limited to situations in which the  
5 stations are undervalued.

6                   JUDGE SIPPEL: No, I didn't say  
7 "undervalued." I didn't say --

8                   MR. KELLER: Or overvalued, for  
9 that matter. I mean, but the Bureau seems to  
10 be saying that unless they're worth less than  
11 the claims are worth, that somehow there is a  
12 problem, that if there is going to be any  
13 profit at all, that somehow second Thursday no  
14 longer applies. I defy anyone to point to a  
15 single second Thursday case that says any such  
16 thing.

17                  JUDGE SIPPEL: Well, there is  
18 certainly an element of integrity and honesty  
19 in any judicial proceeding. I don't think the  
20 Commission wants to be having some kind of a  
21 slippery deal pulled off on them and send a  
22 second Thursday on that basis.

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1 MR. KELLER: That's the big deal?

2 We --

3 JUDGE SIPPEL: Well, I don't know  
4 if it's a big deal. I'm just trying to  
5 exaggerate obviously to make the point. I  
6 mean, you've got to know what's -- the point  
7 is you've got to know what's going on. You  
8 know what I'm saying.

9 MR. KELLER: We know what's going  
10 on. The parties are willing to make this  
11 deal. And those wrongdoers are not going to  
12 benefit from it. We don't know for sure.

13 What the licenses are worth is  
14 what they can later be sold for. And, as I  
15 have often said in this proceeding, I'll  
16 guarantee you that if there is a second  
17 Thursday grant in this case, a second Thursday  
18 approval, then yes, then the licenses are  
19 going to be worth a heck of a lot more than  
20 they are now.

21 MR. HAVENS: Mr. --

22 MR. KELLER: Now they're worth

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1 nothing because of this -

2 JUDGE SIPPEL: How do you know  
3 that there isn't some deal down the road? I  
4 mean, this thing sounds very --

5 MR. KELLER: The Commission has  
6 addressed that in other cases by placing  
7 conditions on -- there can always be a deal  
8 down the road, but the Commission places  
9 conditions on --

10 JUDGE SIPPEL: Are the Depriests  
11 going to be in any line of communication  
12 business after this is all over?

13 MR. KELLER: I don't know what  
14 they're going to be, but they are certainly  
15 going to have absolutely no involvement in  
16 these licenses. And there will conditions on  
17 the grant to --

18 JUDGE SIPPEL: There will be, but  
19 --

20 MR. HAVENS: Judge Sippel?

21 JUDGE SIPPEL: I don't think you  
22 understand what I'm talking about.

**NEAL R. GROSS**

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